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Bulletin 133

Pre-existing Condition Exclusion Waivers
Individual and Non-employer Association or Discretionary Group Policies

This Bulletin is directed to all insurers that write individual health insurance policies or non-employer sponsored association or discretionary group health insurance policies. Beginning July 1, 2005, House Enrolled Act 1075 (P.L. 211-2005) allows insurers to issue individual policies with a waiver of coverage for a specified condition and complications directly related thereto. Department of Insurance Bulletins 96 and 121 are withdrawn.

When issuing waivers, the insurer must comply with several conditions. A waiver may not exceed ten (10) years. The insurer shall provide the applicant written notice explaining the waiver of coverage before issuance of the policy. The insurer must obtain the applicant's initials on the notice, offer of coverage and policy documents as proof that the applicant was provided the required notice and accepts the waiver of coverage. The offer of coverage and the policy must include the waiver in a separate section stating in bold print that the applicant is receiving coverage with an exception for the waived condition. Only two (2) waivers per individual are permitted. The waiver period must run concurrently with any preexisting condition limitation or exclusionary period. The insurer must review the underwriting basis for the waiver upon request, one (1) time each year and remove the waiver if the insurer determines that evidence of insurability is satisfactory. The insurer must disclose to the applicant that he/she may decline the offer of coverage and apply for a policy with the Indiana Comprehensive Health Insurance Association (ICHIA). The individual's insurance card must include a telephone number for verification of whether a given procedure is excluded under the waiver of coverage.

A policy may not include a waiver for a mental health condition or a developmental disability, including pervasive developmental disorder as defined at IC 27-8-14.2. An insurer may not deny coverage, based on the waiver, for any condition or complication that is not specified in the written notice of the waiver, the offer of coverage and the issued policy. Once a waiver is lifted or expires, the insurer shall not consider the previously waived condition in renewal and underwriting determinations and must renew the policy in accordance with Indiana and federal laws.

Reporting Requirements

In order to assist the Department in preparing for its statutory reporting obligations, the Department is directing insurers to notify the Department in writing of an intent to use waivers prior to issuing any waivers. Also, insurers are reminded that waiver forms must be filed and approved by the Department under IC 27-8-5-1.

Each insurer that chooses to issue policies with waivers is required to report the following information on a form prescribed by the Department.

- (1) The number of policies and certificates that the insurer issued with a waiver.
- (2) A list of specified conditions that the insurer waived.
- (3) The number of waivers issued for each specified condition.
- (4) The number of waivers issued categorized by the period of time for which coverage of a specified condition was waived.
- (5) The number of applicants who were denied insurance coverage by the insurer because of a specified condition.

The form for these reports will be posted on the Department's website, www.in.gov/idoi. Reports will be due on September 1, 2006 and September 1, 2007. Insurers participating in the demonstration project under P.L. 211-2003 should file the report due August 1, 2005 for the reporting period of July 1, 2004, through June 30, 2005. Thereafter the reporting requirements of P.L. 211-2003 will be considered void as the 2005 legislation requires duplicative reports in 2006 and 2007 for all insurers issuing waivers.

INDIANA DEPARTMENT OF INSURANCE

James Atterholt, Commissioner